

Amendment No. 1 to SB0766

Johnson

Signature of Sponsor

**AMEND Senate Bill No. 766**

**House Bill No. 653\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 4-28-108, is amended by adding the following language to the end of the section:

The department of economic and community development shall, pursuant to the authority provided in this chapter, ensure that a qualified TNInvestco provides adequate documentary support for all proceeds and distributions related to liquidity events and the department shall use best efforts to confirm that all information provided to the department by the TNInvestco is accurate so the department may ensure that all parties involved receive the proper designated share. Information provided to the department pursuant to this section shall be kept confidential due to the proprietary nature of such information.

SECTION 2. Tennessee Code Annotated, Section 4-28-109(a)(1), is amended by adding the following language to the end of the section:

The department shall obtain all necessary information from each TNInvestco to support the state's profit share percentage. Information provided to the department pursuant to this section shall be kept confidential due to the proprietary nature of such information.

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SECTION 3. Tennessee Code Annotated, Section 4-28-110(a)(2)(C), is amended by deleting "December 1" and by substituting instead "December 31".

SECTION 4. Tennessee Code Annotated, Section 4-28-110(a), is amended by deleting subdivisions (4) and (5) and substituting instead the following:

(4) Within one hundred and twenty (120) days of the close of its fiscal year, annual audited financial statements of the qualified TNInvestco, which must include the opinion of an independent certified public accountant, and an examination review of follow on capital, jobs data and pacing requirement compliance also performed by the independent certified public accountant, prepared in accordance with audit and attestation standards established by the American Institute of Certified Public Accountants. Information provided to the department pursuant to this section shall be kept confidential due to the proprietary nature of such information.

SECTION 5. Tennessee Code Annotated, Section 4-28-111, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) The department shall conduct an annual review of each qualified TNInvestco to determine if the qualified TNInvestco is abiding by the requirements of the program and to ensure that no investments have been made in violation of this chapter. This review shall include the use of the scorecard data received from each qualified TNInvestco as provided in § 4-28-113. The department shall also compare this

scorecard data to the qualified TNInvestco's original application to examine the investment strategy for accuracy and consistency and to ensure that statutory requirements and the department's policies are met each year. Information provided to the department pursuant to this section shall be kept confidential due to the proprietary nature of such information. The cost of the annual review shall be paid by each qualified TNInvestco according to a reasonable fee schedule adopted by the department.

SECTION 6. Tennessee Code Annotated, Section 4-28-111(b), is amended by deleting the existing language and by substituting instead the following:

(b) The department shall provide the qualified TNInvestco a summary of findings including any areas of noncompliance. Failure to cure the areas of noncompliance within forty-five (45) days from the date of the notice of noncompliance shall result in a penalty of ten thousand dollars (\$10,000) per day until the noncompliance is cured. The proceeds from a penalty assessed pursuant to this subsection (b) shall be deposited into the Tennessee rural opportunity fund, to further the state's economic development efforts. Funds related to the investment tax credit shall not be used to pay the penalty imposed under this section.

SECTION 7. Tennessee Code Annotated, Section 4-28-111, is amended by adding the following language as a new subsection (d):

(d) The department of economic and community development may promulgate rules to ensure compliance with the requirements listed in this chapter and the policies and procedures set forth by the department. Rules promulgated by the department may assess a penalty of up to ten thousand dollars (\$10,000) per incidence for failure to comply with the requirements. The proceeds from any such penalty shall be deposited into the Tennessee rural opportunity fund to further the state's economic development efforts. Funds related to the investment tax credit shall not be used to pay the penalty

imposed by the rules. Any penalty assessed may be netted against the annual management fee.

SECTION 8. Tennessee Code Annotated, Section 4-28-112, is amended by adding the following language as a new subsection (c):

(c) The department of economic and community development shall submit the annual report to the designees as specified in subsection (a) no later than the first Tuesday in September of the year following the year of the annual review of the TNInvestcos. If the report cannot be submitted by the first Tuesday in September deadline, the commissioner must notify the designees as specified in subsection (a) no later than thirty (30) days prior to the due date that the report will be late, the reasons why the report cannot be submitted in a timely manner, and an estimated submittal date.

SECTION 9. Tennessee Code Annotated, Section 4-28-106(e), is amended by inserting the following language to the end of the subsection:

Investment returns, profits and the portion of the base investment amount, may be reinvested until the seventh anniversary of the fund. If a TNInvestco elects to reinvest returns, the TNInvestco shall reinvest the state's and the TNInvestco's returns in equal portions.

SECTION 10. Tennessee Code Annotated, Title 4, Chapter 28, Part 1, is amended by adding the following new section:

4-28-115.

Beginning on December 31, 2021, the department shall liquidate any remaining ownership interests owned by the state. Methods to liquidate remaining ownership interests include the sale of interests to a third party. The sale of any ownership interests shall be approved by the treasurer.

SECTION 11. This act shall take effect July 1, 2014, the public welfare requiring it.